IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 17145 of 2004

Between:

S.K.Mukthar, S/o Afeezuddin,
R/o 1-10-62/2, Golkonda, Medak District

..... PETITIONER

AND

1 APSRTC, Musheerabad, Hyderabad rep.by its Managing Director
2 APSRTC, Medak Region, Sangareddy, Medak District rep.by its Regional Manager
3 APSRTC, Bus Depot, Zaheerabad, Medak District rep.by its Depot Manager

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or direction particularly one in the nature of Writ of Mandamus declaring the action of the respondents corporation in not adding the notional increments for the out of service period i.e. 26-11-1991 to 02.06.2002 as arbitrary, unjust, and in violation of Art.14,16 & 21 of the Constitution of India, also contrary to the purport of the award in I.D.no.04 of 1999 and consequently direct the respondents to arrange the re-fixation of pay duly adding the notional increments for the above period along with all consequential benefits in the interest of justice and fair play.

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondents.: MR.V.T.M.PRASAD

The Court at the stage of admission made the following :

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 17145 of 2004

O R D E R:

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The petitioner is working as a driver in the respondent Corporation. He entered into service of respondent-Corporation in the year 1988. His service was regularized w.e.f. 01-09-1989. He was kept under suspension on 26.11.1991 on the ground that he caused an accident, and subsequently, he was removed from service vide order dated 8.10.1992. The petitioner raised I.D.No.4 of 1999 before the Labour Court-II, Hyderabad. The Labour Court passed an award on 05-01-2003, setting aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service with continuity of service but without back wages. Though, the respondent-Corporation reinstated him into service on
03-6-2002, they did not implement the order in toto regarding the notional increments for the period he was out of service. The petitioner therefore, approached this Court seeking a direction to the respondent-Corporation to work out the notional increments for the period he was out of service and to fix his pay according to the rules.

The Respondent-Corporation opposed the petition on the ground that the petitioner is not entitled for notional increments for the period he was out of service by virtue of judgment of the Supreme Court in **A.P.S.R.T.C v. S.NARSA GOUD.**

The learned Counsel for the petitioner submitted that the Supreme Court in the above said case dealt with a question relating to the period of unauthorized absence. Therefore, the decision of the Supreme Court is not applicable to the facts of the case on hand. The learned Counsel for the petitioner further submitted that the facts of this case are squarely covered by an unreported judgment of a Division Bench of this Court dated 22.06.2004 in W.A.No.945 of 2004, and requested to extend the benefit of notional increments. The Division Bench of this Court in W.A.No.945 of 2004 observed that since the Labour Court denied only back wages and maintained continuity of service, the employees are entitled for notional increments and the Tribunal has correctly granted the same, which was confirmed by a learned single Judge. In the present case also the petitioner was removed from service on the ground that he committed an accident. The Labour Court while setting aside the order of removal, ordered reinstatement of the petitioner with continuity of

service but without back wages.

In the light of the judgment of the Division Bench as mentioned above and in the light of the facts and circumstances of the case, the petitioner is entitled for the notional increments for the period he was out of service from 26.11.1991 to 02.06.2002. The respondents are, therefore, directed to work out the notional increments and fix the pay of the petitioner by adding those increments from the date he was out of service to the date on which he was reinstated into service, within three months from the date of receipt of a copy of this Order.

Accordingly, the Writ Petition is disposed of. No order as to costs.

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23rd September 2004.

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Copies to:

1 The Managing Director,APSRTC, Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Medak Region, Sangareddy, Medak District.

3 Depot Manager, APSRTC, Bus Depot, Zaheerabad, Medak District.

4.Two CD Copies.